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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/302,239	04/29/1999	GARY L. NELSESTUEN	09531/005001	6644

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EXAMINER

SCHNIZER, HOLLY G

ART UNIT	PAPER NUMBER
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1653

DATE MAILED: 07/30/2003

28

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action**FILE COPY**Application No.
09/302,239

Applicant(s)

NELSESTUEN, GARY L.

Examiner

Holly Schnizer

Art Unit

1653

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1,3-5,7-14,16,17 and 23-27.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

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HS
Holly Schnizer

Continuation of 3. Applicant's reply has overcome the following rejection(s): the rejection of Claims 1, 3, 4, 7, 8, 9, 13, and 23-27 as anticipated by Cheung et al. is overcome by the amendment. Cheung et al. discloses FVII with a modified Gla domain and does not disclose a factor VIIa with a modified Gla domain. Thus, for the reasons of record, the amendment overcomes the rejection. Moreover, since Cheung et al. implies that the modified proteins disclosed therein do not bind calcium and since calcium is required for binding phospholipid membranes, one of ordinary skill in the art would not have motivation to make factor VIIa with a modified Gla domain corresponding to the FVII of Cheung et al.

Continuation of 5. does NOT place the application in condition for allowance because: while Claim 1 has been amended to clarify that an amino acid substitution occurs at residue 10 OR residue 28; dependent Claim 14 was not amended to maintain consistency and is considered an improper dependent claim because it contains substitutions at residue 10 AND residue 28. See p. 3 of Office Action mailed 5-8-03 for examiner's suggestions of claim amendments to clarify ambiguity. Moreover, a terminal disclaimer has not been filed and therefore the double patenting rejection is maintained.